measures prove ineffective, education, not legislation, is needed. The fact should never be forgotten that the persistence of a practice may be due to some merit which could be safely preserved under proper legal restrictions.

CONFLICT OF LAWS IN NEGOTIABLE INSTRUMENTS.—Bills and notes, as to questions concerning their validity, are *prima facie* governed by the law of the place of contract, unless it is against the morals or policy of the forum to enforce them. But this simple rule is, in some jurisdictions, practically eaten up with exceptions. In England its preservation is effected by treating the *locus contractus* as composed of the two elements, *locus celebrationis* and *locus solutionis*. Dicey, Confl. of Laws, with Am. Notes, 726. In America the distinction between the law applicable to the validity and that governing the performance of negotiable instruments was perhaps first clearly announced by MARTIN, J., in *Depau* v. *Humphreys* (1829) 20 Mart. 1. Judge Story assails this case and refers all contracts, as to their validity as well as their performance, to the *lex loci solutionis*, upon common law authority, he contends, and also because it is a sound presumption, to which legal effect should be given, that the parties contract with reference to that law. Confl. of Laws, § 280. These two views, directly in conflict as to questions of validity, often have been adopted without discrimination. It is only in recent years that the reason for adopting the law of the place of performance—that the intention of the parties should be effectuated—has been applied generally, and the important question in each case has become, what was that intention? No doubt, clearly expressed, *bona fide* intention would prevail in nearly all jurisdictions. But in most cases the parties have no clear intention upon the subject. The question then becomes one of presumption of intention, what is necessary to raise or rebut it, and how strong it shall be considered. The modern way of stating the principle is said to be: "The contract, whether as a whole or in part, is governed by the law which the parties actually or presumptively intended should govern, if the intention was not illegal." Bigelow, Bills and Notes, 2d ed. 278. A recent case in the House of Lords lays this down as the law of England but adds that there is no absolute rule for determining the intention. *Hamlyn* v. *Distillery* [1894] A. C. 202.

The courts favor great freedom of contract in respect to interest: "The parties will be presumed to contract with reference to the laws of the State wherein the stipulated rate is lawful, if unlawful in the other." *Bigelow* v. *Burnhams* (1891) 83 Ia. 120. Why this latitude should be given as to interest charges and refused in other questions of validity is not apparent. Aside from matters of usury, one line of American cases follows *Depau* v. *Humphreys*, *supra*, without reservation. "The nature, obligation, and effect of a contract are to be governed by the law of the place of execution. * * * That is the law which must be regarded in deciding whether

the act done constituted a contract and, if so, between whom and to what effect." SHAW, C. J., in *Carnegie* v. *Morrison* (1841) 2 Met. 381. The Supreme Court has likewise emphatically declared itself in a leading case. *Scudder* v. *Union Nat. Bank* (1875) 91 U. S. 406. But in *Pritchard* v. *Norton* (1882) 106 U. S. 124, though no place of performance was named, payment was evidently intended in Louisiana. "We do not hesitate to decide," the court declares, "that the questions of validity, as depending on the character and sufficiency of the consideration, should be determined by the law of Lousiana" rather than that of New York, the place of execution. And Judge STORY'S view remains supported by the greater number of American authorities. Cases decided soon after its enunciation and indorsing it without reserve are constantly quoted as law. Dicey, Confl. of Laws with Am. Notes, 624; Daniel, Negotiable Instruments, § 879.

In a recent case, *Union Nat. Bank* v. *Chapman* (1902) 169 N. Y. 538, an accommodation note, payable in Illinois, had been signed in Alabama by a married woman as a co-maker with her husband, as surety for him. While such a transaction was prohibited by the laws of the latter State it was valid by those of the former. The first ruling of the court is that the contract of the wife was made in Alabama though the note was first negotiated in Illinois. This conclusion seems remarkable in light of the well-established principles that no obligation arises on an accommodation note until negotiated, and that the contract of a surety does not attach until the principal contract becomes binding. It would seem that Illinois, where the note was negotiated, was the place of contract. *Thompson* v. *Taylor* (1901) 49 Atl. 544; 1 COLUMBIA LAW REVIEW, 558. And this was the opinion of VANN, J., dissenting in the principal case. But, having decided that Alabama was the *locus contractus*, the court passes to the question of the law applicable to capacity to contract. By the civil law this is governed by the law of the domicile—an exception to the rule of *lex loci contractus*. But the common law treats it as an ordinary matter of validity; though it is said that "courts of law will always validate contracts where it is possible to do so without doing violence to their terms or to some well-settled principle of law." *Hauck Co.* v. *Sharpe* (1899) 83 Mo. App. 385, 392. The most modern view, that intention of the parties must prevail, is illustrated by leaving this intention to the jury for determination. *Shillito* v. *Reineking* (1883) 30 Hun, 345. Certainly it is a violent presumption, which seems to have been raised in the principal case, that the parties intended their transaction to be governed by laws which forbid the creation of any obligation at all—to recognize an intention to contract and in the same breath declare there was no intention shown to be governed by laws which would make the contract valid. Nor does this holding of the Court of Appeals seem to accord with New York authority. *Dickinson* v. *Edwards* (1879) 77 N. Y. 573, reaffirming *Jewell* v. *Wright* (1864) 30 N. Y.

259, which had been questioned by inferior tribunals, was the case of an accommodation note executed and payable in New York, but negotiated without the maker's knowledge in Massachusetts. The court, *per* FOLGER, J., reiterated the rule "that where the contract either expressly or tacitly is to be performed in a given country, there the presumed intention of the parties is that it is to be governed by the law of the place of performance as to its validity, nature, obligation, and interpretation." P. 578. This presumption may, indeed, be rebutted, and the place of payment made only an incidental circumstance, by intention to negotiate in a State other than that of payment. *Wayne Co. Bank* v. *Low* (1881) 81 N. Y. 566.